

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9168 of 2023

Applicant :- Smt. Swati And 2 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko. And Another

Counsel for Applicant :- Rajesh Kumar Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard learned counsel for the applicants and Sri Girijesh Kumar Dwivedi, learned A.G.A. for the State and perused the record.

Counter affidavit filed today by the learned A.G.A. is taken on record.

Instant application has been filed with prayer to to quash the impugned the charge-sheet No. 01; dated 12.06.2023 in Case Crime No. 0147/2021 Under Section(s) 363, 366, 504, 506, 427 IPC and Sections 3(1)(da) 3(1)(dha), 3(2)(v) 3(2)(va), 376 IPC and Sections 3 and 4 of Penetrative Sexual Assault-POCSO Act-2012 and against the petitioners pending before Learned Special Court (POCSO Act) and further prayer is to stay the proceedings of the case initiated in the impugned chargesheet no. 01 of 2021 dated 12.06.2023 in Case Crime No. 147 of 2021 under sections 363, 366, 504, 506, 427 IPC and Sections 3(1)(da) 3(1)(dha), 3(2)(v) 3(2)(va), 376 IPC and Sections 3 and 4 of Penetrative Sexual Assault-POCSO Act.

In compliance of the order dated 21.9.2023, applicant no. 2 Dipendra Yadav and applicant no. 1/alleged victim- Smt. Swati are present before this Court.

On query being asked they replied that they have performed marriage being major. They are living as husband and wife. The victim further added that she on her own sweet will went away with the applicant No. 2 and the applicant no. 2 never enticed her away. The father of the victim, being annoyed, lodged F.I.R. against the applicant no. 2.

Counsel appearing for the applicants submits that in fact the first information report was lodged against the applicant no. 2 and against his father. Thereafter, the Investigating Officer without collecting the substantial evidence submitted charge

sheet. He further added that the statement of the victim under Section 164 Cr.P.C. demolishes the story of the prosecution. He next submits that the applicant no. 1 and 2 performs marriage and they are major and they are living as husband and wife. Further submission is that allowing the criminal proceedings the applicant no. 2 amounts to harassment and there is no fate of trial and thus, the criminal proceedings against the applicants may be quashed.

In support of his contention, he has placed reliance on a judgement rendered in case of **Vishwas Bhandari v. State of Punjab and another reported in (2021) 2 Supreme Court Cases 605, Criminal Appeal No.105 of 2021, dated 03.02.2021** and added that the case of the present applicants is a squarely covered with the ratio of the above said judgement.

On the other hand counsel appearing for the State has opposed the submissions made by the learned counsel for the applicants and submits that the alleged victim was minor at the time of the incident and her age was 16 years and 10 days and she was also declared as minor so far as the order passed by the Juvenile Justice Board is concerned. He also added that the accused persons are not entitled for any relief.

Considering the submissions of the learned counsel for the parties and after perusal the material placed on record it transpires that initially an F.I.R. was lodged by the father of the victim against the applicant no. 2 and applicant no. 3 with the allegation that the victim was enticed away from the lawful guardianship of the parents by the applicant no. 2 with the help of the applicant no.3 and rape has also been committed upon her but fact remains from the perusal of the statement of victim recorded under Section 164 Cr.P.C. that no rape has been committed as has been alleged and she went away with the applicant no. 2 with her own sweet will.

This Court further noticed the fact that the applicant nos. 1 and 2 are major as per their academic record and further alleged victim, who is present before this Court, has given statement that no rape has been committed upon her and she went away with her own sweet will with the applicant no. 2. The father being annoyed with the applicant no. 2 lodged F.I.R. against him and his father.

When this Court examines the facts and circumstances of the case in the light of the ratio *of Vishwas Bhandari v. State of Punjab and another (Supra)*, it emerges that the case is covered with the ratio of above said judgment.

Consequently, criminal proceedings arising out of charge-sheet No. 01; dated 12.06.2023 in Case Crime No. 0147/2021 Under Section(s) 363, 366, 504, 506, 427 IPC and Sections 3(1)(da) 3(1)(dha), 3(2)(v) 3(2)(va), 376 IPC and Sections 3 and 4 of Penetrative Sexual Assault-POCSO Act-2012, P.S.-Udaipur District-Pratapgarh are hereby quashed. The consequences shall be followed. Consign to record.

The instant application **under Section 482 Cr.P.C. is hereby allowed.**

The appearances of the applicant no. 1- Smt. Swati and applicant no. 2 Dipendra Yadav are hereby exempted.

Order Date :- 19.10.2023

Anuj Singh